

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHNATHAN JOHNSON,	:	X
	:	10-CV-3635(ARR)
Petitioner,	:	
-against-	:	<u>NOT FOR PRINT OR</u>
DAVID ROCK,	:	<u>ELECTRONIC</u>
	:	<u>PUBLICATION</u>
Respondent.	:	<u>OPINION AND ORDER</u>
	:	
	X	

ROSS, United States District Judge:

On July 15, 2010, petitioner Johnathan Johnson, currently incarcerated at Upstate Correctional Facility, filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the Northern District of New York. By order dated August 9, 2010, the petition was transferred to this court, because the petition challenges a conviction and sentencing that took place in Queens County Court, which is located in the Eastern District of New York. (Dkt. No. 5.) Petitioner challenges a 1988 Queens County conviction for attempted rape in the first degree. As set forth below, this court cannot consider the instant petition and transfers it to the United States Court of Appeals for the Second Circuit.

By Memorandum and Order dated August 13, 1995, this court denied Johnson's petition challenging the same 1988 conviction. See Johnson v. Stinson, No. 94-CV-5486 (ARR), appeal dismissed, Mandate, No. 95-2697 (2d Cir. Apr. 24, 1996). By Memorandum and Order dated February 22, 2001, the court transferred petitioner's subsequent petition challenging the same 1988 conviction to the United States Court of Appeals for the Second Circuit. See Johnson v.

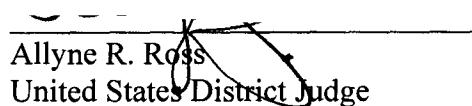
Ricks, 00-CV-662 (ARR), application denied, Mandate, No. 03-3613 (2d Cir. Feb. 17, 2004). In this new petition, Johnson again challenges the same 1988 conviction.¹

The Antiterrorism and Effective Death Penalty Act of 1996 “allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications.” Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003); 28 U.S.C. § 2244(b)(3)(A). Therefore, notwithstanding petitioner’s claim of newly discovered evidence, he must move in the United States Court of Appeals for the Second Circuit for permission to pursue this successive petition for habeas corpus relief. See 28 U.S.C. § 2244(b)(3)(A).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Torres, 316 F.3d at 151-52 (citing Liriano v. United States, 95 F.3d 119, 121-23 (2d Cir. 1996)). This order closes the case. If the Second Circuit authorizes petitioner to proceed with this successive habeas petition, petitioner shall move this court to reopen the case under this docket number.

SO ORDERED.

/Signed by Judge Ross/


Allyne R. Ross
United States District Judge

Dated: August 23, 2010
Brooklyn, New York

¹ Prior to the filing of the petition at issue in this case, on December 24, 2009, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he appeared to challenge both the underlying conviction of attempted rape in the first degree as well as his denial of parole. In an abundance of caution, the court directed the respondents to answer the petition. See Johnson v. Horn, 10-CV-0073 (ARR) (currently pending). Here, however, petitioner challenges only the 1988 conviction and not the denial of parole.

SERVICE LIST:

Pro Se Petitioner
Johnathan Johnson
89A1042
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953